

**NOTE: The following is an Amended Draft response to a request for an advisory opinion prepared for consideration by the Citizen's Ethics Advisory Board. It does not necessarily constitute the views of the Board.**

TO: Board Members

FROM: Peter Lewandowski, Assistant General Counsel

RE: RAO 4722

DATE: April 26, 2007

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## INTRODUCTION

The Citizen's Ethics Advisory Board (Board) issues this advisory opinion in response to a request submitted by Edward Preneta, the Executive Director of the Connecticut Council on Developmental Disabilities (Council), that was subsequently clarified by John M. Flanders, Chairperson of the Advocacy and Legislative Committee and Member of the Executive Committee at the Council. In the initial request, Mr. Preneta presented several conflict-of-interest questions involving Council members and asked whether by serving on the Council the members have conflicts of interest under the Code of Ethics for Public Officials, chapter 10, part I of the General Statutes (Code of Ethics), when receiving certain services and supports.

## BACKGROUND

The following facts, presented in the initial and subsequent requests, are relevant to this opinion.

The Council is a Governor-appointed body of individuals with disabilities, family members and professionals who work together to promote the full inclusion of people with disabilities in community life. First established by Governor Thomas Meskill in 1971, the Council is currently authorized and funded by the federal Developmental Disabilities Assistance and Bill of Rights Act of 2000. The Council receives a fixed amount of federal funds each year and maintains an office with three staff members. The Council engages in advocacy, capacity building and systems change activities on behalf of individuals with developmental disabilities, their families and their communities. The Council, among other things, funds initiatives designed to create opportunities for inclusion in community life, reduce dependence on government services and restore citizen control over programs.

The Council's enabling federal statute requires that a majority of its members as well as its Chair and Vice-Chair be individuals with developmental disabilities, known as self-advocates, or family members of such individuals. The federal Developmental Disabilities Act also requires that self-advocates and family members not manage or

direct the actions of state or private entities that receive funds from the Council or provide services to individuals with disabilities. For the purpose of Council membership, a self-advocate or parent may not, at the same time, be a paid administrator, or a board officer of a public or private agency in the field of developmental disabilities. Individuals who are paid administrators or board officers of public or private agencies are regarded as agency representatives for Council membership purposes.

The reasoning behind the narrow definition of self-advocates and family members, is to support a requirement in the federal Developmental Disabilities Act that Council members avoid the appearance of a conflict of interest. At the same time, almost by definition, anyone who is a self-advocate or parent is receiving some kind of state, federal or privately funded service or support from a public or private agency. This service or support can be substantial and long-term (e.g., Medicaid-Title XIX and state Supplemental Security Income through the Department of Social Services (DSS) or Department of Mental Retardation (DMR)).

In addition, a number of not-for-profit organizations in the state provide minor, or short-term goods and services for individuals who have disabilities and/or their families. These include programs such as “Meals on Wheels” for people who have conditions that make it difficult to obtain groceries or prepare meals, and/or “Camperships,” which provide free or reduced cost admission to recreational or educational facilities for individuals with disabilities or their family members. Camperships include respite care, personal care for an individual with a disability to allow his or her regular care giver or family member time for rest or recreation. Such goods and services provided are based on a criteria established by the provider organization and are available to any individual who meets the criteria, including, but not limited, to recipient’s disability, etc. The goods and services, such as “Meals on Wheels” and “Camperships” are funded by direct state or federal grants, grants from non-profit organizations, or municipal governments.

The Council receives a part of the Federal appropriation under the Developmental Disabilities Act. A significant portion of that money is distributed to non-profit organizations in Connecticut in the form of grants. The Council invites non-profit organizations to submit proposals for projects that promote the Council’s mission. The proposals are reviewed and those that are judged to be most effective in supporting that goal are awarded grants. Council grants are used to fund specifically designed projects and are not used to fund the day to day operations of any organization.

## QUESTIONS

The Board has been presented with the following questions:

1. If the Council awards a grant to a local not-for-profit agency, is it a conflict of interest for a Council member who happens to be a “client” of that agency to receive a “campership”?
2. If the Council awards a grant to the Visiting Nurses Association (VNA), is it a conflict of interest for a Council member who happens to receive Meals-On-

Wheels through VNA to request a lobster dinner instead of meat loaf dinner or to even receive Meals-On-Wheels?

3. If the Council awards a grant to the state's Medicaid agency (i.e., DSS), is it a conflict of interest for a Council member who happens to be a "client" of DSS to receive Medicaid?
4. If the Council awards a grant to the State Department of Education, is it a conflict of interest for the parent of a child with disabilities, who is a Council member, to receive special education services and supports?

## ANALYSIS

Because members of the Council are appointed by the Governor and are authorized to expend public funds in the form of grants, they are considered to be public officials for purposes of the Code of Ethics. General Statutes § 1-79 (k). Public officials are subject to the Code of Ethics, including all applicable gift provisions.

Under the Code of Ethics, "[n]o public official or state employee shall knowingly accept, directly or indirectly, any gift, as defined in subsection (e) of section 1-79, from any person the official or employee knows or has reason to know: (1) Is doing business with or seeking to do business with the department or agency in which the official or employee is employed; (2) is engaged in activities which are directly regulated by such department or agency; or (3) is prequalified under section 4a-100. No person shall knowingly give, directly or indirectly, any gift or gifts in violation of this provision. For the purposes of this subsection, the exclusion to the term "gift" in subdivision (12) of subsection (e) of section 1-79 for a gift for the celebration of a major life event shall not apply. Any person prohibited from making a gift under this subsection shall report to the State Ethics Commission any solicitation of a gift from such person by a state employee or public official." General Statutes § 1-84 (m).

For purposes of § 1-84 (m), any entity that seeks funding from a state agency is deemed to seek business with that state agency. Therefore, an entity that seeks business from a state agency is considered regulated donor under the Code of Ethics. As is evident in § 1-84 (m), public officials are restricted in accepting gifts from regulated donors.

Further, the Council's enabling federal statutes address conflict of interest issues with respect to Council members. Members of the Council who either have disabilities or who are family relatives of individuals with developmental disabilities cannot concurrently be in any position to manage or direct the actions of state or private entities that receive funds from the Council or provide services to individuals with disabilities. Consequently, the focus of the analysis is the applicability of the gift restrictions under the Code of Ethics.

Notably, most, if not all, members of the Council with disabilities and family members who assist persons with disabilities are recipients of some form of accommodation that is funded by either state or federal programs and is available to any

member of the public with a disability. Aid from state and/or federal agencies and state and federally mandated programs administered by private entities that are made available to the general public based on statutorily defined criteria, are not gifts for purposes of the Code of Ethics.

Therefore, with respect to questions 1 and 2 stated above, it is permissible under the Code of Ethics for the Council members to accept “Camperships” and/or “Meals-On-Wheels” that are funded by the federal or state government and are available to any member of the public with a disability, even if such services are administered by non-government agencies with business interests before the Council. State and federally mandated goods and services provided by private organizations are an extension of state and/or federal action.

In contrast, any programs enhanced by private organizations (e.g., a lobster dinner instead of state funded meatloaf) given to the Council members would be considered a gift under the Code of Ethics, subject to applicable restrictions (i.e., \$50 annual limit from a single regulated donor).

With regards to questions 3 and 4, involving goods and services from federal and/or state government agencies, a Council member may receive such goods and services without violating the Code of Ethics because the aforementioned restrictions do not apply to goods and services provided by government entities.

## CONCLUSION

Based on the facts presented, there is nothing in the Code of Ethics that would prohibit a Council member to obtain services from federal or state agencies such as, Medicaid from DSS, or an educational grant from the Department of Education, or to obtain government funded programs such as Camperships” and/or “Meals-On-Wheels.”